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August 26, 1998

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie R. Salas, Esq.  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: WT Docket No. 94-147

Dear Ms. Salas:

Transmitted herewith, on behalf of James A. Kay, Jr., is an original and fourteen (14) copies of his Motion to Strike.

Should the Commission have any questions with respect to this filing, please communicate with the undersigned.

Sincerely yours,



Aaron P. Shainis  
Counsel for  
JAMES A. KAY, JR.

Enclosure

0+14  
10/1/98

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

WT DOCKET NO. 94-147

## CERTIFICATE OF SERVICE


I, Linda E. Skiles, Office Administrator, in the law firm of Shainis & Peltzman, Chartered, do hereby certify that on this 26<sup>th</sup> day of August, 1998, copies of the foregoing document were sent, via hand delivery to the following:

Honorable Richard Sippel  
Administrative Law Judge  
Federal Communications Commission  
Suite 218  
2000 L St., NW  
Washington, DC 20554-0003

John Schauble, Esq.  
Enforcement Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
Suite 8308  
2025 M Street, NW  
Washington, DC 20554-0002

John I. Riffer, Esq.  
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Federal Communications Commission  
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1919 M Street, N. W.  
Washington, D.C. 20554-0001

William H. Knowells-Kelltt, Esq.\*\*  
Gettysburg Office of Operations  
Wireless Telecommunications Bureau  
Federal Communications Commission  
1270 Fairfield Road  
Gettysburg, PA 17325-7245

  
Linda E. Skiles

\*\* Via Facsimile

The Bureau also points to the case of *Baldwin Hardware Corp. v. Franksu Enterprise Corp.*, 78 F.3d 550, 557 (D.C.Cir. 1996), for the holding that “[t]o warrant recusal, bias or prejudice must be directed against a party and bias exhibited against an attorney will only merit recusal when it results in material and identifiable harm to that party’s case.” It is obvious when the Presiding Judge doubts counsel’s religious beliefs acceptance of counsel’s arguments relative to the merits of Mr. Kay’s case becomes problematical. That is a “material and identifiable harm” to Mr. Kay’s case. This is totally different from a refusal of a judge to accept an argument by counsel on substantive matters relative to the merits of the case. However, the refusal of the Judge to believe counsel concerning his religious beliefs are so fundamental and so personal that they shock the conscience. Moreover, the Judge’s insensitivity and inappropriateness also is conduct that cannot be countenanced by the Commission.<sup>1</sup> Contrary to the Bureau’s allegations, the disqualification of the Presiding Judge is totally appropriate.

In view of the foregoing, the Bureau’s late-filed Opposition should be stricken.

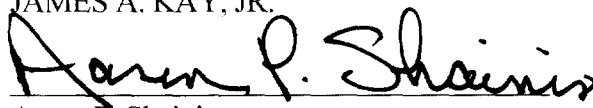
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Law Offices of Robert J. Keller, Esq.

4200 Wisconsin Avenue, N.W. #106-233  
Washington, D.C. 20016-2143

Respectfully submitted,  
JAMES A. KAY, JR.

By:

  
Aaron P. Shainis  
Lee J. Peltzman

By:



Robert J. Keller, Esq.

August 26, 1998

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<sup>1</sup> The Bureau itself agrees that the Judge’s conduct was inappropriate. See Bureau Opposition at para. 4.